

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:)	Docket No. 03-CRS-01
)	Order No. 03-0528-03
Proposed Rulemaking)	
Pertaining to Data Collection)	ADOPTION ORDER
for Qualified Departing Load)	
CRS Exemptions)	
_____)	

I. INTRODUCTION

By this Order, the California Energy Commission (Commission) adopts the attached regulations pertaining to data collection for qualified departing load. The regulations will implement Public Resources Code sections 25216, 25216.5, 25301, and 25320, which set forth the Commission's authority to collect data, conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, prices, and encourage cooperation with state agencies sharing energy related responsibilities.

The regulations adopted today allow the Commission to collect data associated with deployment of distributed generation (DG). This data will assist the Commission in preparing its Integrated Energy Policy Report (IEPR) and allow for assessment of the contributions of DG to the overall reliability of California's electrical system. The data collected will also assist the Commission in making forecasts of electricity demand, and determine the potential for departing load to impact future electricity demand from the electric grid. Departing load refers to that portion of the utility customer's electric load for which the customer: (1) discontinues or reduces its purchase of bundled or direct access service from the utility; (2) purchases or consumes electricity supplied and delivered by "Customer Generation" to replace the utility or Direct Access purchases; and (3) remains physically located at the same location or elsewhere within the utility's service territory.

The data collected will also be utilized to determine whether Departing Load customers are eligible for an exemption from the cost responsibility surcharge (CRS), part of the energy cost obligations associated with the California energy crisis of 2000-01, as set forth by the California Public Utilities Commission (CPUC) in Decision 03-04-030.

There are no existing regulations that address the collection of data associated with departing load and impacts on the California electrical system. With this

decision, the Commission is adopting new regulations that address the tracking of departing load or DG technologies and load in relation to CPUC D.03-04-030.

II. RULEMAKING HISTORY

The Commission was created by the Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code section 25500 et seq.). The Act vests the Commission with a wide range of duties and responsibilities related to the development and conservation of energy resources in California. As the agency responsible for establishing the state's energy policy, the Commission collects, stores, analyzes, and disseminates a broad range of information.

The Committee conducted two public hearings to hear public comment on the regulations adopted today. The initial workshop was held on July 16th to hear public comment on draft language that addressed criteria for CRS exemptions, the queuing process, and dealing with any disputes related to categorization. Several members of the public, and stakeholder organizations filed comments with the Commission. After taking these comments into consideration, the Commission drafted the proposed regulations. The Committee filed the Notice of Proposed Action (Notice), Initial Statement of Reasons, and Express Terms with the Office of Administrative Law on August 19, 2003. On August 29, 2003 the Notice was published in the California Regulatory Notice Register and was sent electronically to every person on the Commission's mailing list for this proceeding, and the CPUC proceeding R.02-01-011. The Committee held a public hearing, on September 24, 2003 to address the regulations adopted today, and the subsequent forms that will allow for the data to be collected.

In addition to the two Committee meetings cited above, the Commission staff also held workshops on June 6, August 13, and September 5, 2003 to discuss issues with the public and stakeholders. During the workshops the Committee and staff received suggestions and comments from the public concerning both the Express Terms, and form that will be adopted as a result of the adopted regulations. The Committee has also received several written comments. In response to oral and written comments, the Committee has proposed some grammatical corrections, and some minor clarifications to the adopted regulations. The Committee found that the changes were non-substantial, and that additional Notice was not required pursuant to Government Code § 11346.8(c). Several of the comments received proposed changes that the Commission found it could not implement through this proceeding. A detailed response to the written comments received will be provided in the Final Statement of Reasons, filed with the Office of Administrative Law, after this adoption.

III. FINDINGS

1. California Environmental Quality Act (Pub. Resources Code § 2100 et seq.): The California Environmental Quality Act (CEQA) requires all public agencies to certify the completion of an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment. (Pub. Resources Code § 21100). However, CEQA provides an exemption for projects for which it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. (Cal. Code Regs., tit. 14, § 15061(b)(3)). The Commission's decision today to adopt the proposed regulations is exempt for this reason. The regulations as proposed create a form and a process to collect data on projects that will have undergone individual CEQA analysis. The purpose for collecting the data is to determine whether such projects are eligible for CRS exemptions, and how DG plays into the overall electrical landscape in California. The regulations as proposed create reporting requirements for those facilities seeking an exemption from CRS as established by the CPUC. There is no possibility that collection of this data will have a significant effect on the environment. Therefore, the Commission finds that there is no possibility that the proposal may have a significant effect on the environment and that the adoption of these regulations is therefore exempt from the requirements of CEQA.

2. Findings Required for the Final Statement of Reasons: Government Code § 11346.9 requires the Commission to submit to the Office of Administrative Law a Final Statement of Reasons that includes two determinations. The first, identified in subsection (a)(2), addresses whether the regulation imposes a mandate on local agencies or school districts, and if so, whether the mandate requires reimbursement. The Commission finds that the amendments to the regulations being adopted today do not impose a mandate on local agencies or school districts that requires reimbursement.

The second determination the Commission must make, found in subsection (a)(4), is that no alternative considered by the Commission would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation. The Commission considered alternatives to drafting the proposed regulations. A discussion of the alternatives considered and the reasons why the regulations adopted today were initially proposed was included in the Initial Statement of Reasons. The public has not suggested an alternative to the rulemaking process. Based on a review of the record and on the comments of parties, the Commission finds that no alternative it has considered would be more effective in carrying out the purposes for which the amendments are proposed, or would be as effective and less burdensome to affected private persons than the proposed amendments.

3. Economic Impact Findings: Government Code Section 11346.3 requires the Commission to assess the potential for adverse economic impacts on California business enterprises and individuals, and to avoid the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. The section establishes a series of requirements that the Commission must adhere to in amending its regulations. The Commission has adhered to these requirements and finds all of the following:

- a. That the regulations are based on adequate information concerning the need for, and the consequences of, the proposed action. The Commission initiated the rulemaking to implement a data collection process that would allow the Commission to assess the amount of DG being installed, and whether such departing load was eligible for CRS exemptions as established by the CPUC. The proposed regulations are based on public input, information provided to us by the various stakeholders and CPUC, and our own experience working with the public and stakeholders groups through the Rule 21 process. The Commission held two Committee workshops, and three staff workshops to address development of the proposed regulations. All of the participants in the workshop received Notice and the comments received support the proposed regulations. The majority of the written comments suggested non-substantive clarifying changes. This indicates that the Commission based the proposed regulations adopted today on adequate information.
- b. That the Commission considered the impact on business in the rulemaking with consideration of industries affected, including the ability of California businesses to compete with businesses in other states. In consideration of potential impacts of the regulations on business within the state the Commission finds that the regulations as adopted will not have a significant, statewide adverse economic impact directly on business or on the ability of California businesses to compete with businesses in other states.

This finding is based on the nature of the proposed regulations. The adopted regulations will not impose substantive requirements on businesses. Instead, the adopted regulations will establish procedures for the Commission to collect data on DG, and based on this data, and the CPUC adopted criteria, will allow the CPUC to implement CRS exemptions for eligible departing load. By establishing a procedure for data collection from departing load customers for CRS exemptions, the Commission expects anyone in the DG industry who qualifies for an exemption to benefit from the cost savings by not having to pay energy costs that otherwise rest on generators and consumers from the energy crisis of 2000-01.

The direct benefits from the existence of a CRS exemption stem from the CPUC's decision, not the action of the Commission in implementation of the adopted regulations.

The result of the rulemaking is adoption of regulations that do not adversely impact businesses within the state, to the contrary the adopted regulations will further a direct benefit to businesses that qualify as departing load by allowing them to take advantage of the CRS exemptions outlined in CPUC Decision 03-04-030.

- c. That the amendments will have no effect on elimination of jobs within the State of California, the elimination of existing businesses within the State of California, the creation of new jobs and businesses or the expansion of businesses currently doing business within the State of California. The regulations adopted today will have no foreseeable effect on the creation or elimination of jobs, the creation or elimination of businesses within the state, or the expansion of businesses currently doing business within the state. The regulations adopted today do not impose substantive requirements; they merely establish procedures for the Commission to collect data from customer generators concerning aspects of their generating units. The regulations adopted today will provide a process for the collection of data that will assist the state in making accurate assessments of the DG aspects of the energy industry and allow for timely qualification and tracking of CRS exemptions for eligible facilities. Therefore we find that the Notice appropriately concluded that the regulations would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.
- d. That the regulations are necessary for the health, safety, or welfare of the people of the State of California that these regulations apply to businesses. The regulations are necessary to ensure a diverse mix of energy resources within the state. Customer generators did not necessary anticipate the energy crisis of 2000-01 and have made investments in energy choices that could be harmful if economic consideration is not given to the overall benefits achieved through reliability, environmental concerns, and stability of energy markets. These regulations allow for a mechanism to determine departing load CRS exemption eligibility. This eligibility determination will allow for diverse energy options within the state to continue, therefore providing additional reliability to the overall system.

IV. ORDER

The Commission adopts the attached regulations governing Data Collection for Qualified Departing Load, located at Title 20, California Code of Regulations, section 1395 et seq.

Date: October 22, 2003

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

_____/Signed/_____
WILLIAM J. KEESE
Chairman

_____/Absent/_____
ROBERT PERNELL
Commissioner

_____/Absent/_____
JAMES D. BOYD
Commissioner

_____/Signed/_____
JOHN L. GEESMAN
Commissioner

_____/Signed/_____
ARTHUR H. ROSENFELD
Commissioner